

Before reaching Rule 6, Rule 4 provides for initial screening of petitions, and Rule 5 provides for the filing of an Answer and a Reply to petitions that survive the screening process. It is only after the issues join that Section 2255 discovery is possibly available under Rule 6.

Despite that advice, defendant has again filed his discovery motion in advance of filing his Section 2255 petition.

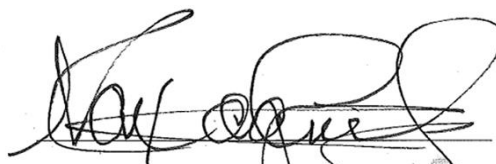
There are provisions of the Federal Rules of Civil Procedure that allow parties to engage in certain court sanctioned pre-filing discovery. Fed.R.Civ.P. 27. In an abundance of caution, the court has reviewed Rule 27 to determine whether it could be applicable to defendant's Section 2255 claim. Unlike the situation anticipated by Rule 27, the testimony which defendant seeks has already been "perpetuated" and will be accessible by the court for review in the event defendant's claim survives initial screening and any motion to dismiss.

Defendant is again advised that he needs to first file his Section 2255 petition with the court, under penalty of perjury, setting forth his claims supporting his contention that he is being held unlawfully. Defendant is further advised that under the AEDPA, he has only one year from his conviction becoming final to file his petition, that he can only file one petition without securing leave from the Fourth Circuit, and that he should set forth each and every claim he has in that petition. Section 2255 forms are available from the Clerk of Court and any such claim must be signed under penalty of perjury.

ORDER

IT IS, THEREFORE, ORDERED that defendant's Motion for Order to Disclose Grand Jury Transcript for the Purposes of Collateral Attack Mosley Conviction and his Sentence on 28 U.S.C. § 2255 (#99) is DENIED without prejudice.

Signed: 5/16/2014



Max O. Cogburn Jr.
United States District Judge